

REMARKS

Reconsideration of this application and the rejections of claims 1-5, 7, 9, 10, 12, 22 and 23 are respectfully requested. Applicant has attempted to address every ground for rejection in the Office Action dated March 30, 2011 (Paper No. 20110326) and believes the application is now in condition for allowance. The claims have been amended to better describe the invention.

Applicant acknowledges the allowance of claims 11, 13-21 and 24-28 and defers acceptance of these claims at this time in view of the following remarks.

Claims 1-5, 7 and 9-28 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Examiner states that there is not support in the specification for a locking device having more than one inner cap and outer cap. Applicant has amended the claims to recite that the locking device has an inner cap and an outer cap. Accordingly, Applicant respectfully requests that the rejection of claims 1-5, 7 and 9-28 be withdrawn.

Claims 1-5, 7, 9, 12, 22 and 23 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,265,744 to Duty. Applicant disagrees with and traverses this rejection for the following reasons.

Duty discloses a tamper-proof cap for a container including a driven member 20 and a drive member 40 that are concentrically mounted on the top of the

container (see FIGs. 13 and 14). The driven member 20 includes a window 58 through which a dye is visible upon turning of the drive member (Col. 6, lines 20-30).

In contrast, amended claim 1 recites, among other things, a locking device including “a first segment being realized as an inner cap” and “a second segment being realized as an outer cap and situated so as to be capable of being moved relative to the first segment” where “the first segment and the second segment [are] . . . capable of assuming at least a first position and a second position relative to one another such that a movement required to open or close the locking device immediately moves the position of the first segment relative to the second segment at least temporarily from the first position to the second position, wherein the inner cap includes an indicator area that is permanently modified in at least one physically perceivable property, the permanent modification of the at least one physically perceivable property of said inner cap being affected by the movement to open or close the locking device.” Duty fails to disclose such subject matter.

In Duty, the tamper-proof cap includes an inner driven member 20, an outer drive member 40 and a dye capsule 36 (see FIG. 13). The capsule 36 is positioned under the drive member 40 so that when a user presses down and twists the outer drive member 40 to remove the cap, the capsule ruptures causing the dye in the capsule to flow onto and coat the inner driven member 20. A user looks through the transparent window 58 on the outer drive member 40 to see if the dye is on the inner driven member 20 thereby

indicating that the container cap has been opened. In Duty, the capsule 36 is a separate indicator associated with the inner and outer members. In contrast, the claimed locking device includes an inner cap having an indicator area that indicates to a user when the outer cap has moved relative to the inner cap. Thus, the inner cap itself acts as the indicator by including an indicator area that is viewable through the outer cap when the inner and outer caps have been rotated relative to each other. Duty fails to disclose that its inner driven member 20 has an indicator area or acts as an indicator (on its own) in any way.

For at least these reasons, Applicant submits that amended claim 1, and the claims that depend therefrom, are each patentably distinguished over Duty and in condition for allowance.

Claim 10 is rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of Duty and U.S. Patent No. 5,188,251 to Kusz. Applicant disagrees with and traverses this rejection for the following reasons.

Claim 10 depends from amended claim 1. As stated above, Duty fails to disclose the subject matter of amended claim 1.

Kusz discloses a child resistant closure device including an outer closure member 21, an inner closure member 22 and an indicator disk 31 positioned on the top of the inner member and between the inner and outer members as shown in FIGs. 1 and 2. The indicator disk 31 includes indicia that is visible through a window 32a on the outer

member 21 to indicate the relative position of the inner and outer members. Kusz fails to disclose or suggest that the inner closure member 22 includes an indicator area that enables the inner closure member to act as the visual indicator itself as to the relative positions of the inner and outer members as recited in amended claim 1. Thus, Kusz fails to remedy the deficiencies of Duty.

Accordingly, Applicant submits that claim 10 is patentably distinguished over the combination of Duty and Kusz for at least the reasons provided above and for the further reason that the cited combination fails to disclose or suggest the subject matter of claim 10 in combination with the subject matter of amended claim 1.

Accordingly, Applicant respectfully submits that in view of the above-identified remarks, the claims in their present form are patentably distinct over the art of record. Allowance of the rejected claims is respectfully requested. Should the Examiner

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discover there are remaining issues which may be resolved by a telephone interview, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

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